

FILED
Clerk
District Court

OCT -2 2007

1 For The Northern Mariana Islands
2 By _____
3 (Deputy Clerk)

3
4 **IN THE UNITED STATES DISTRICT COURT**
5
6 **FOR THE NORTHERN MARIANA ISLANDS**

7 AUTO MARINE, INC., et. al.,

Case No. CV-05-0042

8 Plaintiffs,

9
10 vs.
11
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

12 ANTONIO SABLAM, et. al.,

13 Defendants.

14
I. INTRODUCTION

15 This case challenges the constitutionality of and application of 3 CMC § 4434(e)(1) on its
16 face and as applied to the plaintiffs. Section 4434(e)(1) provides that “[t]he Director of Labor shall
17 not approve nonresident worker certificates for the following job classifications: taxi cab driver,
18 secretary, bookkeeper, accounting clerk, messenger, receptionist, surface tour boat operator, bus
19 driver, including tour bus driver, and telephone switchboard operator.”

20
II. FINDINGS OF FACT

21 **BY STIPULATION** of the parties, **THE COURT** incorporates the parties' Stipulated Facts,
22 No. 44 (Sept. 17, 2007), except that paragraph 40 shall state: “At all times relevant herein, Auto
23 Marine operated its vessels in waters over the submerged lands in or around the Commonwealth of
24 the Northern Mariana Islands.”

25
III. CONCLUSIONS OF LAW

- 26
1. The court has original jurisdiction pursuant to 28 U.S.C. § 1331.
2. When challenging the statute upon its face, “the challenger must establish that no set of

1 circumstances exists under which the [statute] would be valid.” *United States v. Salerno*, 481 U.S.
 2 739, 745 (1987). When challenging the statute as applied to this case, the challenger must establish
 3 that “the [statute], by its own terms, infringed constitutional freedoms in the circumstances of the
 4 particular case.” *United States v. Christian Echoes Ministry*, 404 U.S. 561, 565 (1972).

5 3. The Fourteenth Amendment applies to the Commonwealth of the Northern Mariana
 6 Islands (“Commonwealth”) “as if the Northern Mariana Islands were one of the several states.”
 7 Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the
 8 United States of America (“Covenant”) § 501, 48 U.S.C. § 1801 (1993); *Sagana v. Tenorio*, 384
 9 F.3d 731, 739 (9th Cir. 2004).

10 4. While “the Fourteenth Amendment does not deny to States the power to treat different
 11 classes of persons in different ways[,]” *Reed v. Reed*, 404 U.S. 71, 75 (1971), “[t]he Equal Protection
 12 Clause of that Amendment does [] deny to States the power to legislate that different treatment be
 13 accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated
 14 to the objective of that statute,” *id.*

15 5. “Equal protection claims are considered under a two-step analysis. First, [the plaintiff]
 16 must show that the statute in question ‘results in members of a certain group being treated differently
 17 from other persons based on membership in that group.’” *Sagana*, 384 F.3d at 740.

18 6. In general, the Nonresident Workers Act (“NRWA”) creates a preference scheme whereby
 19 a prospective employer must attempt to employ a resident worker before obtaining permission to
 20 employ a nonresident worker. See *id.* at 734-35 for a general description of the NRWA.

21 7. The exception to the preference scheme is Title 3, Commonwealth Code § 4434(e)(1),
 22 which provides that “[t]he Director of Labor shall not approve nonresident worker certificates for the
 23 following job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger,
 24 receptionist, surface tour boat operator, bus driver, including tour bus driver, and telephone
 25 switchboard operator.” Thus, under 3 CMC § 4434(e)(1), nonresident workers are completely
 26 excluded from working in certain job classifications.

1 8. It is uncontested that the NRWA is a discriminatory statute treating nonresidents
 2 differently from residents and citizens.

3 9. “In the second step, [the] court assesses the legitimacy of a discriminatory statute under
 4 the appropriate level of scrutiny.” *Sagana*, 384 F.3d at 740-41. While the parties disagree on the
 5 level of judicial scrutiny that must be applied to this case, the court finds that under both the rational
 6 basis and intermediate level of scrutiny, the statute does not survive the plaintiff’s equal protection
 7 challenge. *See Id.* at 741 (declining to decide whether intermediate scrutiny or rational basis
 8 applied).

9 10. Under the rational basis test, “[a] classification ‘must be reasonable, not arbitrary, and
 10 must rest upon some ground of difference having a fair and substantial relation to the object of the
 11 legislation, so that all persons similarly circumstanced shall be treated alike.’” *Royster Guano Co. v.*
 12 *Virginia*, 253 U.S. 412, 415 (1920).

13 11. The government did not provide any rationale as to how § 4434(e)(1) has a fair and
 14 substantial relation to the purpose of the NRWA. As stated in *Sagana*, 384 F.3d at 741, the purpose
 15 of the NRWA as a whole is to provide “a balanced and stable economy in the Commonwealth” by
 16 providing residents a preference in employment, to uplift the stagnant Commonwealth economy by
 17 providing temporary alien labor, to prevent the impairment of wages and working conditions of
 18 resident workers due to the availability of temporary alien labor, and to provide “enforcement,
 19 control and regulation of nonresident workers[,]” § 4411(b). These are reasonable and important
 20 purposes. *See Sagana*, 384 F.3d at 741.

21 12. Section 4434(e)(1) does not provide a preference to resident workers; rather, it
 22 completely forecloses nonresident workers from employment in specific job classifications.

23 13. Section 4434(e)(1) does not does not create temporary alien labor because it completely
 24 eliminates the availability of temporary alien labor in the specific job classifications.

25 14. Section 4434(e)(1) does not prevent the impairment of wages and working conditions of
 26 resident workers due to the availability of temporary alien labor because it does not create temporary

1 alien labor in the specific job classifications.

2 15. Furthermore, the government provides no basis why the government has any interest in
3 preventing all nonresident workers from working in the specific job classifications.

4 16. The government provides no basis why the government has any interest in preventing
5 employers from hiring a qualified nonresident worker in the specific job classifications if there are
6 no available qualified resident workers to fill those positions.

7 17. The government provides no basis why the government has an interest in requiring
8 employers to keep positions unfilled in the event that no qualified resident worker is willing and able
9 to take those positions.

10 18. The government provides no basis for why the government has an interest in singling out
11 these specific job classifications from all other jobs in the Northern Mariana Islands.

12 **THEREFORE**, the court concludes that the government failed to provide any rational basis
13 why nonresident workers should be completely foreclosed from being employed in these specific job
14 classifications. Accordingly, the court finds that it need not consider whether any heightened level of
15 scrutiny applies and finds in favor of the plaintiffs on claim 1.

16 **FURTHERMORE**, due to the court's ruling on claim 1, the court need not consider claim 2.

17 **IT IS SO ORDERED.**

18 **DATED** this 2nd day of October, 2007.

19 

20 ALEX R. MUNSON

21 U.S. District Court Chief Judge